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THE WAR AND THE CONSTITUTION.*

One hundred and forty-one years ago yesterday, when the Congress met to sign the Declaration of Independence, our country was at war for the maintenance of her rights. Now we find her standing with flashing sword, not merely in defense of her own rights, but in defense of the outraged rights of humanity. And how different are the issues, how different is the foe! In 1776 our contest was with England. The only thing at stake was the right of taxation without representation. If we had lost, the taxation would not have been oppressive, and when the foolish men who for a few brief years were ministers of state sank back into obscurity where they belonged, the obnoxious impost would no doubt have been withdrawn. Had we failed, we should have been self-governing colonies like Canada and Australia, and in all likelihood we should have been treated with such kindness that in a short time we should have been as loyal to England as the African Boers.

It is no such magnanimous foe that confronts us today. The great Midgard Serpent, which in Norse mythology was to destroy the world, has issued from its lair, seeking to enslave mankind. When General von Bernhardi published his "Germany and the Next War," the most infamous book that has been issued since Macchiavelli's "Prince," few paid any attention to it outside of Germany. Its proposals were so outrageous that men could not conceive that any government could give them its sanction. In England a few voices were raised in warning, notably that of Prof. Ursher, who foresaw clearly what was going to happen; but, like Cassandra, he cried in vain to ears that would not hear. The whole conspiracy against human rights and treaty obligations was so monstrous that to normal minds it seemed impossible. But the storm broke, and upon the pitiful pretext that an Austrian prince had been killed on Austrian soil by an Austrian subject, war was declared. And such a war! A war without example in history, where all human rights, all sacred treaties, all principles of humanity and justice are trodden

*An address before the Bar Association of Texas, at Houston July 5, 1917.

under foot; where innocent Belgium is invaded and enslaved without excuse; where poisonous gases and liquid fire are employed contrary to the uses of civilized warfare and the Hague treaties of 1907; where passenger ships with their human freight, hospital ships with their helpless wounded, are sent to the bottom without warning; where Zeppelins hurl their bombs on unfortified towns, murdering inoffensive women and children; where cathedrals and libraries which have been respected through centuries of warfare are wantonly destroyed; where the peaceful inhabitants of the conquered territory are carried off into slavery; where every command of God, every law of man, every dictate of humanity is trampled under foot, and *Schrecklichkeit*, murder and rapine are the order of the day.

Nor was it the drunken frenzy of the first victory that inspired these crimes, as we vainly hoped. The German Government, if it be not mad, must have seen long since that victory is impossible; yet each day its offenses assume a blacker hue. And now comes General von Bissing's final message, to make von Bernhardt's infamous book appear innocent by comparison. Here is a man who must have stood as high in the counsels of the German Government as any—the man who was selected for the most difficult and responsible of positions, the governorship of Belgium. What he proposes must have the sanction of his employers, who have never repudiated it, and have given it to the press without comment. He proposes to murder the King of the Belgians and annex his kingdom; to enslave the people, and rule them with a rod of iron—not to treat them with the kindness with which Alsace and Lorraine and German Poland have been treated—a kindness that has sent a shudder of horror through the civilized world—and all for what? That it may be made a vantage ground from which to launch forth the new war for which the Germans must begin to get ready as soon as this is ended. When we read that document we realize that the men who rule Germany today must be hunted down like mad-dogs; that no peace must be made until they are cast from power, and a government of the people, for the people, and by the people has been set up at Berlin.

It is not a simple matter like taxation without representation

that we are fighting for. We are fighting that freedom, justice and humanity may not be blotted from the earth; that the principles of Christian civilization may be maintained; that Christ may not yield to Moloch.

I have often heard it asked why the Prussians are so different from the rest of us. The explanation is simple, and no doubt it has often been stated; but I have not seen it in print. It is this: Prussia was never touched by the spirit of Christian chivalry, which has so profoundly influenced the people of Western Europe, particularly those of England and France and of the United States. There were good men and good women before the days of chivalry; but that high and gentle courtesy, that regard for the feelings of others, that desire to shield the weak and the defenseless, that homage to woman's virtues and her charms, which go to make the modern gentleman, would never have existed without Christian chivalry. And chivalry never penetrated into Germany beyond the Rhine provinces. The German nobleman, though he assumed the outward trappings of knighthood, knew nothing of its spirit. Instead of going forth in quest of adventures to succor the oppressed, he was a robber baron, sweeping down from his rock-hewn eyrie to rob and murder the passing traveler, or to harry the lands of his neighbor. We cannot think of a Prussian acting as so many Englishmen and Americans acted when the *Lusitania* was sinking, any more than we can imagine an English or American government that would perpetrate such a crime.

The Germans are great on history; yet upon them its lessons make no impression. They should remember that some four hundred years ago Philip II of Spain undertook to subdue Belgium. He sent the Duke of Alva to Brussels, to murder and to burn until the land submitted. He succeeded. The spirit of Belgium was crushed, and it bowed to the Spanish yoke. But his victory was dearly purchased. His crimes against the Belgians so aroused the indignation of the world that Spain's blood-stained empire was swept away, never to return. Alva still sleeps in a splendid monument in the Cathedral of Salamanca, and is still a favorite hero with his countrymen. No doubt von Bissing will receive equal honors; but if there be a God in

heaven the nations that pay homage to such monsters must go down in shame.

So much must I say by way of prelude; and now when you are breathing a sigh of relief at the thought that at last he is done, I will turn to the real subject of my discourse.

Thirty-one years ago, when we celebrated the centenary of the establishment of our national constitution, all Americans seemed united in looking upon it as the palladium of their liberties, a precious heritage that must be defended with the last drop of our blood.

About that time I was talking with a very intelligent Englishman, and was boasting, with something of the presumption of youth, of the superiority of our system of government, with its constitutional guaranties, over the government of England; and he replied, "Yes, and if you do not watch out those same constitutional guaranties are going to prove your undoing. Your men of wealth and culture, relying upon them, turn away from the rude and distasteful struggles of politics, and leave your public affairs in the hands of professional politicians. We, on the other hand, know that Parliament can do anything; that it can behead us, that it can confiscate our goods. We know that our lives and fortunes are forever at stake, and we are constantly active in political affairs. Some day you will awake to find that the great hungry masses will decline to be held in check by a mere scrap of paper; and in that hour of peril you will suddenly realize that you have entrusted the helm of the ship of state to venal ruffians, who are only too glad to side with the pirates."

As the years have passed, and I have seen the growing agitation against our glorious constitution, I have often thought of the prophetic words of my Englishman.

There are among us men who, as Scipio Nasica closed every speech in the Roman Senate with the words, *Delenda est Carthago*, say each day in their hearts, "The constitution is the chief thing that stands between us and our desires. It must be destroyed." At first their number was few; but as the years go by they have steadily augmented until they have become formidable. They are working day and night to achieve their purpose, and they are gaining recruits every day.

The robber who would carry off the sheep seeks first to put out of the way the watch dogs that guard the flock. The guardians of our constitution are our courts. No other department of the government can be relied upon for their protection. Take away the power of the courts to set aside statutes because they are in contravention of the constitution, and the constitution would be, like a treaty in the estimation of the German Chancellor, a mere scrap of paper.

We have had abundant illustration of this in my own state.

Our constitution requires that notice of the intention to introduce a local bill be published for thirty days. In an evil hour our Supreme Court held that whether the notice had been given was a question for the legislature alone. From that day on not the slightest regard has been paid to the constitutional requirement. Scarcely a notice of the kind has been published. The most important local acts are passed without comment merely because the member from that county desires their passage, and without the knowledge of the great majority of the people affected.

Our constitution forbids the passage of a local act where the result could be obtained by compliance with a general law. In an evil hour our Supreme Court held that whether a local act was necessary was not a judicial question; and now we have innumerable local acts to accomplish things which could be accomplished better under the general laws if they are really desired by the people interested.

Our constitution requires that each bill be read three times at length. It would be impossible, however, to pass these innumerable local acts if that provision were complied with, and so, they read only the first and last sections, and nobody knows what the bill contains save him who introduced it.

We passed a referendum amendment that provides that no act shall go into effect until ninety days after the adjournment of the legislature unless its immediate operation is required for the public peace, health or safety, and the only effect of the amendment is to add an emergency clause to every statute.

Instances of such disregard of the constitution by the legislative and executive departments of the government could be multiplied *ad nauseam*. All of our experience forces upon us the conviction that if you deprive the courts of the power to declare

statutes unconstitutional, you reduce the constitution to a useless scrap of paper, to be trampled under foot by every designing demagogue or ambitious politician.

The enemies of the constitution have not been slow to perceive this. Not daring to attack the constitution openly, they turn upon its guardians, and they say that the courts in setting aside acts of the legislature as unconstitutional are exercising a usurped authority. If they can maintain their position, the stately fabric of our constitution, which has sheltered us for a hundred and forty years, will crumble like a house of sand.

History has shown us many amazing things. It has shown us the Duke of Bourbon, cousin to the King, masquerading as Philippe Egalite and encouraging all the worst excesses of the French Revolution. It has shown us Count Henri de Rochefort, a man of immense wealth, of the highest education, a great collector of works of art, inciting the Commune of Paris to its most hideous crimes. But I do not think it has shown anything more amazing than the chief justice of one of our oldest commonwealths leading in the attack upon the constitution which he has sworn to support, seeking to wrest from its only guardians the power to defend it.

Then, too, we have seen a man who has three times received the nomination of a great party for the presidency urging the adoption of an amendment by which the judges would hold their office at the mere whim of the people, and would be subject to dismissal whenever they rendered an unpopular decision.

And, worst of all, we have seen a truly great man, who has rendered distinguished services to his country, advocating the adoption of a system by which the solemn judgments of the courts could be set aside by a popular vote.

When such things can overcome us like a summer cloud, it is foolish to shut our eyes to what is passing around us, and to say that the constitution is not in danger.

We are now entering upon a war whose duration no man can predict. If the German government can hold the unquestioning allegiance of its people and of its allies, the struggle may be prolonged for years. It may assume forms where the public danger may require the setting aside of the constitutional guaran-

ties for the time being. But I have no fear of the effects of the war on the constitution. It passed unscathed through the fiery ordeal of our Civil War, and I doubt not that it will endure triumphant from this titanic conflict. And the Providence which seems to watch over our beloved country, which raised Washington, the most stainless of patriots, the wisest of statesmen, to preside at its birth; which called the great, sad, noble-hearted Lincoln to the helm when the ship of state seemed foundering upon the rocks of civil strife; that Providence has now chosen to guide us in this hour of the world's supreme peril, a man worthy to stand beside his illustrious predecessors, burning with a patriotism as lofty, dowered with an equal wisdom, and gifted with a power of clear, forcible, convincing exposition which is probably unparalleled in any public man since Demosthenes.

No, I do not dread the war's effects upon our constitution; but I dread the years that will follow. The war will bind us together while it lasts. Rich and poor will fight side by side in the trenches, and will learn to respect one another. If the machinations of German spies make it necessary to suspend the right of habeas corpus and other constitutional guaranties, our people will bear it with patience, knowing that it will not be for long.

But when peace comes it will find a different world. I have heard many predict that when the war is over we shall enjoy an era of prosperity. I dare not hope it. Adam Smith long ago taught us that you cannot hurt one nation without injuring all. If a merchant should wake up some morning to find half of his customers dead and the remainder bankrupt, he would not expect a profitable season. It is likely therefore that peace will bring an era of depression.

Europe is the head of the world. It is there that its wealth and power have been concentrated. We have dwelt apart in splendid isolation; but all the rest of the world has lived under Europe's protecting shadow. Therefore any blow to Europe must be felt in earth's remotest regions.

I dread to return to the Europe that I visited so often in the days that are gone. It will be no longer the happy hunting ground of the lover of art and pleasure. The ghastly forms of the maimed and blind will confront you at every turn. The prodigious na-

tional debts that are being piled up will necessitate taxes that will amount almost to confiscation. Even before the War France, England, Italy and Russia could hardly stagger under their national debts; and already these have been multiplied at least five times, with more yet to come.

History presents to us one war which was an exact counterpart on a small scale of that which is now desolating the world. In the Peloponnesian War the democracies and the oligarchies of Greece joined in a death struggle, and fought it to a finish. The result was that the strong young men were slain, and only the old, the weak and the degenerate were left to perpetuate the race. In that fratricidal strife the Hellenic genius perished. The mighty Homer, the glorious Pindar, the incomparable Sappho, the sublime Aeschylus, the noble Sophocles, the deep-seeing Euripides, the elemental humor of Aristophanes gave place to the commonplace comedy of Menander, to the soft pleadings of Theocritus and Longus, to the cynical mockeries of Lucian. The degeneracy was such that the Greece which had hurled back the countless myriads of Darius and Xerxes fell after a mere show of resistance before a Macedonian prince, and submitted almost without striking a blow to the arms of Rome. In that war democracy went down in defeat, owing chiefly to the criminal ambition of Alcibiades. In this war, the criminal ambitions are in the other camp, and the leaders of democracy are displaying a wisdom and public spirit that promise a glorious and final victory.

The most costly beneficent work ever carried through by man was the construction of the Panama Canal. But it is computed that now the warring nations spend in each period of three days a sum equal to the cost of that prodigious enterprise.

I have read that in Japan since the Russian war taxes have become so enormous that if a man has an income of ten thousand dollars, six thousand of it goes to the government, and only four thousand is left to the owner. Something of the sort is going to happen in Europe.

The oppressive taxation, the destruction caused by the war, the necessity of supporting great numbers of people so maimed that they cannot earn their own livelihood, is going to produce widespread distress in Europe; and we know that under such

conditions the venomous serpents of anarchy and socialism will multiply and raise their heads to strike.

As I have just remarked, Adam Smith long ago demonstrated that you cannot harm one country without hurting all the rest. And this principle applies with as much force in the moral as in the material world. If one nation is corrupted, the seeds of corruption will infect every other. If Europe becomes a hotbed of socialism and anarchy, we cannot protect our shores from contamination. If we could prevent the landing at our ports of all disaffected persons (and that is plainly impossible) their teachings would yet be borne across the waters and find a fertile soil among a large portion of our own population.

We welcome the European revolutions that burst the bonds of slavery; but they involve a menace to our own institutions. They are not political revolutions, like the victory of the barons and people at Runnymede, like the expulsion of the Stuarts in 1688, like our own Revolution of 1776. They are social revolutions. Their aim is not to establish liberty with equal opportunities for all. They seek to overturn the foundations of society, to sweep away the institutions of the past, to create a new heaven and a new earth. Their leaders generally have in mind not a practical solution of the problems that confront us, but some visionary Utopia, incapable of realization until human nature is made over in a perfect mold.

Broadly, these enemies of the established order may be divided into the anarchists and the socialists. As for the anarchists, they are simply mad-dogs that may be subjugated at any cost. Their aim is robbery and murder. They are criminals of the most dangerous type, because, like the Thugs of India, robbery and murder are for them a sort of religion. With them society can make no compromise. They must be exterminated as venomous serpents, or at least held at bay as ravening wolves.

With the socialists it is different. The objects that they aim at are many of them laudable, and the only trouble is that the imperfection of human nature makes them unattainable, at least for the present. They seek not liberty, but a tyranny far more hateful than that of Czar or Kaiser, the tyranny of the labor leaders—men most of whom are well-meaning, but who are in

no wise equipped for the high functions of government. At Roubaix in France they were given a free rein, and the result was a saturnalia of folly and corruption that bankrupted that large and prosperous manufacturing city. In Milwaukee we have seen a socialist mayor and alderman hold sway, and, though held in check by our constitutional limitations and statutes, the results have been disastrous. Socialism as practiced today means simply the rule of the lower classes without constitutional guaranties or respect for vested rights, with the purpose of reducing all the world to a uniform level of dull mediocrity. It means a government of limitless powers that can regulate every act of every citizen. It means that we are to cease to be individuals, and become mere cogs in a great industrial machine.

A vast cabbage field has its utility; but in our hearts there is something that revolts at the idea of seeing the whole world planted in cabbages and wheat and potatoes; which longs to see the roses bloom in their gorgeous beauty and fill the air with fragrance, to behold the unpainted lilies glorious with the colors of the rainbow. To mere materialists the space given to their cultivation is wasted; to the rest of us the food for the soul that they furnish is as indispensable as bodily nourishment. The hateful despotism of Louis XIV, which yet fostered the genius of Corneille, Racine and Moliere, has perhaps done more for the world than the waving wheat-fields of Argentina, whence no soul-stirring message has yet issued.

The Germans are not an inventive people. For forty years they have devoted their highest talents to the preparation for war; yet not one of the things that differentiate this war from its predecessors is of their invention. The submarine, the machine gun, the barbed wire, the tanks, the aeroplane are all American, while the wireless telegraphy is Italian and the automobile is French. The Germans invented only the Zeppelin, which has proved a disastrous failure.

So, they did not invent socialism, but it is the natural growth of their institutions, and with them it has flourished mightily. For more than a hundred years the German philosophers have been teaching the doctrine that man exists for the state, not the state for man. There has been no party of any consequence in Germany that stood up for individual liberty. All have been

agreed that the state should be omnipotent; that only as a part of it and for its service should the individual exist. The difference of opinion has only been in the objects for which the state should exercise its unlimited dominion over the lives and fortunes of its subjects. The Kaiser and the military authorities think that it should be for their own glory and power. The Socialists would not deprive the government of its despotic authority; they only wish to get control of the machine, and use it for the exaltation of the proletariat at the expense of its present oppressors and of the middle class.

To us the despotism of the Kaiser and the despotism of labor-leaders are equally hateful. What we want is the freedom to seek our own happiness in our own way so long as we do no injury to our neighbors. We crave no dominion over others, and we resent their ambition to dominate over us.

After the war Europe is going to be a hot-bed of sedition. The terrible poverty and the grinding taxes are going to drive many into anarchy; and not a few of these will seek a refuge on our shores from their ills at home. These will bring with them their pernicious principles, and will diffuse them among our working classes, and more still among the vicious idlers who infest our cities.

The circumstances of this war are giving to the Socialists a great advantage. Russia is in their hands in so far as it is not anarchistic. In France the Socialist Briand has proved their strong man, and his great services to his country will confer a new prestige on him and his associates. England has to turn in her hour of peril to the fiery little Welshman, Lloyd-George, whose life has been one long fight against the House of Lords and the British aristocracy. The success of these men will encourage the socialists in our own land.

Our constitution will be in peril from all sides. The people of substance, justly enamoured of its guaranties of life, liberty and property, will support it to the last. Unhappily, the machinations of the predatory rich, who will abuse those guaranties in the future as they have in the past, and under the protection of the law pile up vast, unearned fortunes, will continue to make those guaranties hateful to a public that has been robbed, and finds itself powerless to redress its wrongs.

The fault here, however, is not with the constitution. The powers which it grants to the government are ample. It is the laws that are antiquated and inefficient. In the old days when men stood as individuals, competition and supply and demand were adequate to adjust values. Now our immense corporations eliminate competition, and supply and demand have little to do with prices. We have demonstrated the inefficiency of the anti-trust laws. Trust after trust has been dissolved, and prices continue to soar. The dissolution of no trust has been followed by a cheapening of its products. Naught remains but government regulation. The doctrine of *laissez faire*, so dear to Jefferson's heart and entirely adequate in his day, must be abandoned. It is true that there are many perils in government regulations—dangers of corruption, dangers of stupidity, dangers of arbitrary abuse of power; but all of these are less to be dreaded than the unbridled Saturnalia of the predatory rich.

In the early common law days it appears that almost every business was treated as public, and therefore subject to regulation. And there is much reason for the contention. To the traveler on horseback the services of the blacksmith are indispensable. Men must have food, and there is no reason why the man who has it for sale should not be compelled to serve all customers alike who are ready to pay. The innkeeper must not only furnish food, but prepare it. Why should the grocer be so independent? Save in tropical countries, clothing is essential to life; and it is hard to justify the rule that the man who has it to sell can leave one of his fellow-citizens to suffer who has the means to buy. But in some way, which has perhaps never been explained, the courts receded from their original position, and made all businesses private, save a few, like those of innkeepers and common carriers, though it must be conceded that the price of food and raiment is more important to the community than the cost of its carriage. A return to the old common law view may become essential. Various decisions of the Supreme Court, such as that holding that rates of insurance are a matter for public regulation, show a tendency that way.

The dangers to the constitution from unprincipled wealth are only indirect. It is forced to cling to that venerable instrument

as its only safety. It does not wish to attack it. Its only offense is that its misdeeds bring the constitution into odium.

It is different with the Socialists and with the majority of the leaders of organized labor. The constitution stands squarely in the way of the carrying out of their plans. They feel that they must get rid of it at any cost. In my own state two years ago the labor organizations presented through the initiative a constitutional amendment which provided that the constitution might be amended in any number of particulars at any general election by a mere majority of those voting on the question. This, of course, meant the abolition of the constitution. Yet a majority of our politicians, in their anxiety to win the labor vote, announced their approval of the iniquitous scheme; and it was only by a comparatively narrow margin that constitutional government was saved to Arkansas. This shows how close we are to the abyss, how true is the saying that we used to consider something of a rhetorical exaggeration—"Eternal vigilance is the price of liberty."

As I have said, the Socialists are not like the anarchists, mere criminals in purpose and intent. Many of their aims are laudable; only on account of the imperfection of human nature they are mostly impracticable.

In the eighteenth century, when the English common law was merely a farrago of nonsense, a collection of arbitrary rules, nearly all of which were an outrage on reason and justice, Blackstone gravely declared that it was the perfection of human reason. We must guard against such absurd conservatism. Many of the aberrations of the common law we have corrected, some remain yet to be dealt with; such, for example, as the rule that casts the burden of industrial accidents on the poor laborer, who has only the strength of his arms to stand between him and the starvation of himself and family, instead of casting it upon the business, where it belongs. The judges who laid down this iniquitous rule did not intend any wrong; but they were members of the master class, and looked on such questions from the master's standpoint. The unfortunate servant was declared to have assumed the risk, when in point of fact it was cast upon him without his consent. At last our Employers' Liability Acts are changing this evil rule, and

placing the results of industrial accidents where in justice they should fall.

A danger to our constitution lurks in the ultra-conservatism of the courts. The constitution is broad enough to meet all the exigencies of a civilization expanding along those lines of individual liberty which are our most precious heritage, and in defense of which we must stand ready to expend our last drop of blood and our last cent of treasure. But it could be construed, as some theologians have construed the beautiful gospel of Christ, until it ceases to be a living force and is converted into a benumbing formula.

In this respect Mr. Justice Holmes has rendered our country a service for which we should never cease to be grateful. First among our supreme judges he brought to that high tribunal a study of modern industrial problems, a realization of the fact that our conditions today necessitate a class of legislation which our forefathers would have looked on with abhorrence and which was not needed or justifiable in their time. Largely under his influence our Supreme Court has changed from a highly conservative to a liberal and progressive body. And whatever the merits in the objections to the confirmation of Mr. Justice Brandeis—and I confess that I have not studied them sufficiently to form an opinion—I predict that he will be a great power for good in the exalted seat that he has been called to fill. If he alone had the power of decision, he might be dangerous; but as it is, he can only give his colleagues the benefit of his extensive study of modern social problems.

If we undertake to make the constitution a dam to stem the tide of human progress, we may be sure that it will be swept away. It should not be an obstruction. It should be the broad channel, with high and well-defined banks, between which the stream of progress may flow on forever in calm and majestic strength.

You can not put aside a just demand by a refusal. Like Banquo's ghost, it will not down, but will return to haunt you. Some of the demands of the Socialists are just and practical. It is because the German government has listened to these demands—it is because it does so much for the people—that in this time of its supreme trial it holds their allegiance despite its unspeakable crimes. If a carpenter in Frankfurt on the Main finds himself

out of employment, he goes to the government labor bureau, and it finds him a job in Frankfurt on the Oder at the other extremity of the empire. The laborer can rarely hope to accumulate a competency for his old age by the toil of his hands, and the spectre of suffering and dependence in his declining years darkens his thoughts by day and haunts his dreams by night. German old age pensions protect him from this calamity; and in many other ways the government looks after his health and comfort. It is not surprising that men are willing to fight for a government that does so much for them, even though it places vexatious restrictions upon their personal liberty.

I do not mean to say that our governments should adopt these socialistic measures. I have not studied their operation sufficiently to be justified in forming an opinion. But I do know that such matters should be carefully investigated, and that we should adopt the course that will redound to the greatest good of the greatest number. And I also know that while we have many rich men who use their wealth with a noble and far-sighted philanthropy perhaps unexampled in the history of the world, we have many others who should be made to realize that wealth has its obligations as well as its rights.

We used to think that the authority of the government should be restricted as much as possible; and in the conditions existing in the early days of the Republic that was true. But in the course of our unexampled industrial development it has become necessary to grant tremendous powers to the great corporations through which we have achieved it, and if these are to be effectually controlled, enlarged authority must be conceded to state and federal governments, lest like Frankenstein, we become the victims of the giants that we have called into being. Our land, once a homogeneous collection of free citizens, has become a country where prodigious corporations confront the public on the one hand, and confront on the other immense unions of labor, which are ready to fly at their throats. We are always on the edge of industrial conflicts that may at any time grow to such dimensions as to become a civil war. It is not sufficient to clothe our government with the power to suppress such insurrections; it must have the power to prevent them. The great corporations, which are

essential to our prosperity, must be protected against the ambition and passions of labor leaders, and at the same time they must be compelled to deal fairly with the public and to pay to their employees wages proportioned to the value of the product of their labor and to provide for them the best practical conditions for carrying on their work. Particularly must the government shield the women and children who work, not only against the maltreatment, but against the avarice of their masters.

The old principle of *laissez faire*, which was adequate and wise in the days of Jefferson, must give way to enlarged governmental powers—powers which at times may be abused, but which are better than the anarchy and civil strife, the vast strikes that disrupt the business of the whole country, which now threaten us every day. The courts must realize the changed conditions, and must not give to our constitutions a construction so narrow as to make them inadequate to meet the needs of the hour. These hide-bound constructions are unnecessary and they imperil the existence of constitutional government. The constitutional guaranties must be maintained; but the only way to maintain them is to mold them to the requirements of modern civilization. They must be reins to guide the chariot of progress in the road of safety, not barriers across its track.

We have developed industrially until we have outgrown our home markets, and now we must go out into the world, and compete with the other great manufacturing nations. Industrial isolation has become as impossible as political isolation. We can no longer afford to muddle along in the old haphazard fashion. We must gird our lions for the struggle; we must co-ordinate our efforts; we must increase our efficiency in every way; and the first requisite toward efficiency is to minimize the friction between capital and labor by regulations just to both and vigorously enforced.

Again and again of late we have had the disgraceful spectacle of corporations raising the price of their commodities at the same time that they declare dividends of fifty and even a hundred per cent. Competition no longer protects us against such outrages, and the strong arm of the government must be extended to shield the citizen from such extortion.

The constitution must not be converted into a barricade behind which the predatory rich can entrench themselves in safety while they fatten on the poor. Its purpose must be to secure as far as possible equal opportunities for all. In the old days everything that was required for this was that the government should hold hands off, and leave competition to do its work of weeding out the lazy and incompetent. The weaker the government the better, provided it was strong enough to maintain order. Now enormous accumulations of wealth in a few hands operating through immense corporations are in a position to crush the individual. In many fields competition has ceased to exist. To deal with the situation the hands of our federal and state governments must be strengthened. But any strengthening of the hands of government is a misfortune. Power is always liable to abuse, and the greater the power the more certain is the abuse to follow. It is unfortunate that the time has come when we must strengthen the government so that it may deal with the predatory rich on the one hand and the labor unions on the other.

Mr. Lincoln said that it is doubtful whether it is possible to devise a government strong enough to protect us from hostile invasion that would not be too strong for the liberties of the people. Now that we are brought face to face with the most terrible military power that the world has ever known, we realize the truth of his foreboding statement. If Mr. Lincoln were here today, he would say that it is equally difficult to devise a government strong enough to protect us from the labor unions and the predatory rich that will not be too powerful for popular freedom to subsist. Yet to that Herculean task we must address ourselves. If we fall under the dominion either of the predatory rich or of the labor unions, we shall cease to be free-men, and life will no longer be worth living. Only the vigorous exercise of governmental authority can save us, and a government clothed with such powers is a constant menace.

As the time has passed when we could sit upon our remote shore and watch without concern the struggles of the old world; so the time has gone when, relying upon our written constitutions, we could safely entrust the conduct of governmental affairs to professional politicians. If the government is to have

the authority necessary to our protection in the stormy days that are to come, it must be administered by our best men; and, as in England, every man with anything at stake must be active in politics and forever vigilant.

It is a great compliment to our noble profession that in the present crisis when the existence of freedom in the world is in peril, all those who are striving in the cause of liberty look to members of the bar for their salvation. England has been suspicious of lawyers, and rarely has a lawyer had a commanding place in her councils; but in this hour of her supreme trial it is to a little Welch lawyer that she looks for safety. Mr. Asquith, too, who threw in his lot with the Allies and who conducted her affairs so ably in the first two years of the war, is a lawyer. In France, M. Viviani, the prime minister at the beginning of the war, M. Briand, whose dauntless courage saved Verdun to France when the military authorities advised its abandonment in the face of the unexampled German onslaught, and M. Ribot, who is now guiding the destinies of the country, are all lawyers; and apparently it is the young lawyer Kerensky, Minister of War and Marine, who is to save Russia from anarchy, if she is to be saved at all. In Italy their strong man Sonnino is a lawyer; and even tyrannical Germany has in Bethmann-Hollweg a lawyer for its chancellor.

What a difference in a hundred years! At the time of the Napoleonic wars the members of the bar were almost ignored in the administration of the government. But during the century respect for the law and for those who administer it has steadily grown until lawyers now guide the destinies of all the liberal nations, and even in autocratic Germany a lawyer holds the chief position in the administration, though it must be confessed that he is but the subservient tool of a despotic master.

In conclusion, I would say that in the years that succeed the war we may anticipate an even fiercer attack upon our constitution. Sometimes it will be direct, as in the case of the anarchistic amendment that was almost adopted in my state at the dictation of the labor unions; but more often it will be aimed at the judges, who are its guardians. And while they are the guardians of the constitution, they cannot protect themselves from ribald assaults.

The dignity of their position, the isolation from partisan strife in which it is their duty to live, preclude their entering the arena to protect themselves. Therefore, we, the members of the bar, must stand between the watchdogs of the constitution and the ravening wolves that would rend them limb from limb. We must cease to rely upon constitutional guaranties alone, and realize that a constitution without men to uphold it is as useless as a fortress without a garrison. The time is coming when we must man the walls, and put forth all our strength to maintain those principles of individual liberty which we have inherited from our forefathers and which we must transmit unimpaired to our descendants.

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